

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD
ALBERT H. GREENE
CARL C. DAVIS*
CHARLES T. KAPPLER
ROBERT S. HOPE
JOHN H. DOYLE
MILTON C. GRACE*

* NOT A MEMBER OF D.C. BAR

LAW OFFICES
ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D.C.

20006

June 26, 1979

RECORDATION NO. 10539

JUN 26 1979 - 12 32 PM

INTERSTATE COMMERCE COMMISSION

OF COUNSEL
S. LARSON

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

Secretary
Interstate Commerce Commission
Washington, D.C.

Date JUN 26 1979

Fee \$ 60.00

CC Washington, D. C.

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 11303(a) of Title 49 of the United States Code and the regulations thereunder are original and two counterparts of a Lease Agreement dated as of May 31, 1979; and an Assignment and Subordination Agreement dated June 22, 1979.

A general description of the railroad equipment covered by the enclosed documents is, as follows:

Fifty (50) 70-ton 50'6" XF boxcars with single 10' sliding doors and rigid underframes bearing logo of New Hope & Ivyland Railroad Company and road numbers NHIR 851 through NHIR 900, both inclusive.

The names and addresses of the parties to the above described documents are:

Lessor/Assignor: McHugh Brothers Crane Rentals, Inc.
P. O. Box 196
Penndel, Pa. 19047

Lessee: New Hope & Ivyland Railroad Company
P. O. Box 196
Penndel, Pa. 19047

Assignee: Central Penn National Bank
5 Penn Centre Plaza
Philadelphia, Pennsylvania

The undersigned is agent for Central Penn National Bank for the purpose of recording the enclosed documents and has knowledge of the matters set forth therein.

JUN 26 12 17 PM '79

RECEIVED

Secretary
Interstate Commerce Commission
June 26, 1979
Page Two

Please return the stamped counterparts of the enclosed documents to Charles T. Kappler, Esq., Alvord and Alvord, 200 World Center Building, Washington, D.C. 20006 or to the bearer hereof.

Also enclosed is a remittance payable to the order of the Interstate Commerce Commission in the amount of \$60.00 in payment of the required recordation fees.

Very truly yours,

ALVORD AND ALVORD, as Agent for
Central Penn National Bank

By Charles T. Kappler

Charles T. Kappler

RECORDATION NO. 10539-1425

JUN 26 1979 - 12 30 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND SUBORDINATION AGREEMENT

THIS AGREEMENT made the 22nd day of June 1979, by and among MCHUGH BROTHERS CRANE RENTALS, INC., a Pennsylvania corporation ("Borrower"), NEW HOPE & IVYLAND RAILROAD COMPANY, a Pennsylvania corporation ("Lessee") and CENTRAL PENN NATIONAL BANK, a national banking association ("Bank").

W I T N E S S E T H:

I. Borrower is the owner of fifty (50) 50 foot 6 inch 70-ton Railroad Box Cars (the "Cars") described in Exhibit A attached hereto and made a part hereof and covered by a certain Chattel Mortgage and Security Agreement ("Mortgage") given by Borrower to the Bank in the amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000), dated June , 1979, intended to be recorded at the Interstate Commerce Commission ("ICC") prior hereto, securing the indebtedness under a Loan Agreement ("Loan Agreement"), dated as of June , 1979, as evidenced by notes of even date therewith made by Borrower and payable to the Bank ("Notes"). The Mortgage, Notes and Loan Agreement are sometimes hereinafter collectively referred to as the "Loan Documents".

II. Borrower has entered into a lease of the Cars, dated May 31, 1979, with Lessee (together with all renewals and extensions thereof, collectively referred to as the "Lease"),

which Lease is intended to be recorded immediately prior hereto.

III. Borrower has entered into a management agreement, dated May 31, 1979, with Lessee, regarding the management of the Cars (the "Management Agreement").

IV. The parties desire to set out their understanding as to certain of their respective rights and obligations in the transactions above described.

NOW, THEREFORE, the parties hereto, in consideration of the premises and their mutual covenants herein contained and intending to be legally bound hereby, agree as follows:

1. Assignment to Bank. For the purpose of securing payment of the indebtedness evidenced by the Notes and the payment of all other sums, with interest thereon, to become due and payable by Borrower under the provisions of the Loan Documents or under the provisions hereof, and the performance and discharge of each and every obligation, covenant and agreement of Borrower contained therein and herein, Borrower hereby transfers, assigns, sets over and grants to Bank a security interest and lien upon (under the Uniform Commercial Code, as amended, or other applicable law) in and to, all of Borrower's right, title and interest in and to the Lease and the Management Agreement, and all rights to monies and causes of action now or hereafter owing to, or arising in favor of, Borrower from Lessee thereunder, and all cash and non-cash proceeds thereof, to have and to hold the same unto the Bank forever, or for such shorter period as may hereinafter be indicated.

2. Warranties and Representations.

(a) Borrower warrants and represents to Bank that the Cars are not, as of the date hereof, subject to any other lease or agreement affecting the right to possess, manage or use them.

(b) Borrower and Lessee warrant and represent to Bank that (i) neither Borrower nor Lessee is in default under the terms of the Lease or Management Agreement, (ii) the Lease and Management Agreement are in full force and effect, (iii) no payments under the Lease have been anticipated, waived, released, discounted or otherwise discharged or compromised, (iv) Borrower has not received any deposits from Lessee, and (v) Lessee has no setoff or counterclaim against Borrower.

3. Payment of Rent and Other Monies Under the Lease.

Borrower and Lessee understand and agree that until the Mortgage is satisfied of record, all payments now or hereafter due Borrower under the Lease or Management Agreement, shall be paid to or at the direction of the Bank. Until further written notice from the Bank, Lessee is directed by Bank to pay all such sums to Borrower.

4. Lease not to be modified, etc. Borrower and Lessee agree that, without the prior written consent of the Bank, no obligation, covenant or agreement of Lessee under the Lease or Management Agreement will be waived, excused, condoned or in any manner released or discharged; nor will said Lease or Management Agreement be cancelled, terminated or surrendered, nor will any provisions thereof be modified, extended or in

any way altered, nor will any prepayment of monies under the Lease be solicited, made or accepted.

5. Consent of Bank. Wherever in the Lease or Management Agreement it is provided that the lessor's consent or approval is required or that anything shall be done to the satisfaction of Borrower, or any words of similar import, this shall be taken to mean that the approval, consent or satisfaction of the Bank shall be required. Lessee's rights under the Lease or Management Agreement shall not be assigned or otherwise transferred, including a transfer by operation of law, without the prior written consent of Bank.

6. Nonlimitation of Bank's Rights Under the Loan Documents. Nothing in this Agreement contained shall prejudice or be construed to prejudice the right of the said Bank to commence and prosecute, or to prevent the said Bank from commencing and prosecuting, any action which it may deem advisable, or which it may be entitled to commence and prosecute under the terms of the Loan Documents; or shall this Agreement be construed to waive any defaults now existing or which may occur under said Loan Documents; or be construed as granting a forbearance or extension of time of payment.

7. Nonassumption of Liability by Bank. Bank, by execution and acceptance of this Agreement or by making demand or collecting monies under the Lease or Management Agreement, does not assume any liability or become liable in any manner whatsoever for the performance of any of the terms and conditions

thereof, unless and until Bank shall expressly assume such obligations in writing, and Bank shall not be liable for any act or omission of Borrower, or subject to any offsets or defenses which Lessee may have at any time against the Borrower.

8. Notice to Bank. Wherever in the Lease or Management Agreement it is provided that notice of any kind shall be given to the Borrower by the Lessee or to Lessee by Borrower, this shall be taken to mean that a copy of such notice shall be given simultaneously to the Bank.

9. Notice of Breach. Lessee shall give Bank notice of any alleged breach by Borrower under the Lease or Management Agreement and afford Bank a reasonable opportunity of at least thirty (30) days to cure any such alleged breach, but Bank, in no event, shall be obligated to cure such breach.

10. Subordination. Lessee agrees that the Lease and Management Agreement are, and all of Lessee's rights thereunder are, and always shall be, subject and subordinate to the Loan Documents and to all advances made or to be made thereunder and to the interest thereon, and all renewals, replacements, modifications, consolidations, or extensions thereof. Should Bank or any holder of the Loan Documents desire confirmation of such subordination, Lessee, upon written request, and from time to time, will execute and deliver, without charge and in form satisfactory to Bank or such holder, all instruments and/or documents that may be requested to acknowledge such subordination, in recordable form.

11. Priority Loadings. In the event that the Cars are at anytime returned to Lessee, Lessee agrees to grant loading priority to the Cars over any other box cars which Lessee owns, leases or manages, other than priorities disclosed below. Lessee warrants and represents to Bank that other than the box cars owned by McHugh Brothers Partnership and Borrower, which Cars have priority pro rata with the ~~Box~~ Cars, ^{LESSEE} has granted no loading priorities.

12. Modification. This Agreement may not be modified orally or in any other manner than by an agreement in writing, signed by the parties hereto or their respective successors in interest.

13. Notices. Any notice given pursuant to this Agreement shall be valid only if given in writing, and shall be deemed sufficiently given if given by registered mail or certified mail with sufficient postage attached. Notice to the parties to this Agreement shall be addressed as follows:

Borrower: McHugh Brothers Crane Rentals, Inc.
P. O. Box 196
Penn del, PA 19047
Attn: President

Lessee: New Hope & Ivyland Railroad Company
P. O. Box 196
Penn del, PA 19047
Attn: President

Bank: Central Penn National Bank
Five Penn Center Plaza
Philadelphia, PA 19103
Attn: Paul A. Pyfer, Vice President

The date of any notice provided for in this Agreement shall be the date of deposit in the United States mails

with sufficient postage, if given by certified mail; or the date of actual delivery to the above address of the party to be notified, if otherwise given. The person and place to which notice may be given may be changed from time to time by the parties respectively upon written notice to the others, effective five (5) days after delivery of such notice.

14. Captions. It is agreed that the captions of this Agreement are for convenience only and are not a part of this Agreement, and do not in any way limit or amplify the terms and provisions of this Agreement.

15. Benefit and Binding Effect. This Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

16. Governing Law. The terms of this Assignment and Subordination Agreement and all rights and obligations hereunder, shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20(c) of the Interstate Commerce Act.

17. Counterparts and Execution. This Assignment and Subordination Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed an original, and such counterparts, together, shall con-

stitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

McHUGH BROTHERS CRANE RENTALS, INC.

Witness:

James L McHugh By Edward L McHugh V.P.

NEW HOPE & IVYLAND RAILROAD COMPANY

Attest:

Edward L McHugh By James L McHugh
VP Pres

CENTRAL PENN NATIONAL BANK

Attest:

John H Weierman AC By Cliff V.B.

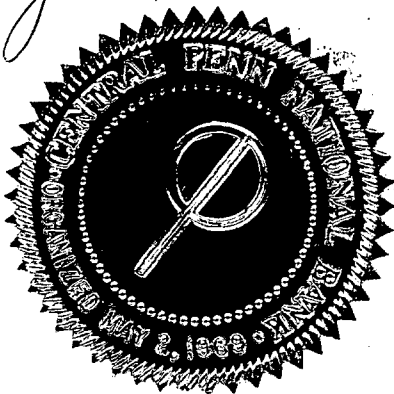


Exhibit A

<u>Type</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Road Numbers</u>	<u>Time and Place of Delivery</u>
70-ton 50'6" XF Box Cars with Single 10' Sliding Doors and Rigid Underframes bearing logo of New Hope & Ivyland Railroad Company	50	\$37,150.	\$1,850,000.	NHIR 851-900 Incl.	June 1979 at FMC Corporation's plant.

COMMONWEALTH OF PENNSYLVANIA:

SS:

COUNTY OF PHILADELPHIA :

On this 22nd day of June , 1979, before me personally appeared Paul A. Pyfer , to me personally known, who, being by me duly sworn, says that he is Vice President of Central Penn National Bank, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.


Notary Public

AGATHA ROCCHIA
Notary Public, Phila., Phila. Co.
My Commission Expires May 8, 1982

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF Philadelphia SS:

On this 22nd day of June, 1979, before me personally appeared Edward J. McHugh, to me personally known, who, being by me duly sworn, says that he is Vice President of McHugh Brothers Crane Rental, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Agatha Rocchia
Notary Public

COMMONWEALTH OF Pennsylvania
COUNTY OF Philadelphia

AGATHA ROCCHIA
Notary Public, Phila., Phila. Co.
My Commission Expires May 8, 1982

On this 22nd day of June, 1979, before me personally appeared James P. McHugh, to me personally known, who, being by me duly sworn, says that he is President of New Hope & Ivyland Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Agatha Rocchia
Notary Public

AGATHA ROCCHIA
Notary Public, Phila., Phila. Co.
My Commission Expires May 8, 1982